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Attorney for Zebulion Ian Lister

United States District Court
Eastern District of Washington
Honorable Mary K. Dimke

United States,

Plaintiff,

v.

Zebulion Ian Lister,

Defendant.

No. 1:22-CR-2006-MKD-1

Expedited Motion to Reopen
Detention¹

Before Judge Ekstrom

April 14, 2023 – 6:30 p.m.
Yakima—Without Oral Argument

¹ Defense counsel is not requesting a supplemental PTS be prepared prior to the hearing. Further, Defense counsel has set this for Friday this week to provide sufficient time to secure a continuance of Mr. Lister's upcoming court dates with the District Court Judge assigned to this case. Mr. Lister intends to seek a continuance irrespective of the results of this motion.

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Mr. Lister made an initial appearance and was arraigned on an indictment on February 27, 2023. ECF No. 63. On the same day, the Court conducted a detention hearing and ultimately granted the Government's motion for detention. ECF No. 64. Specifically, the Court detained Mr. Lister based on its finding that he posed a risk of danger to the community. *Id.* at 4. The Court did not find he presented a risk of nonappearance. *Id.* Mr. Lister now comes before the Court seeking to reopen his detention hearing after undergoing a substance use evaluation and securing a bed date for inpatient treatment.

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Motion to Reopen Detention
- 1 -

1 hearing and that has a material bearing on the issue [of] whether” release is appropriate
2 pursuant to the BRA. 18 U.S.C. § 3142(f). The same four factors evaluated at an initial
3 detention hearing are considered on a motion to reopen. *See* 18 U.S.C. § 3124(g).

4 The BRA “requires the release of a person facing trial under the least restrictive
5 condition or combination of conditions that will reasonably assure the appearance of
6 the person as required and the safety of the community.” *U.S. v. Gebro*, 948 F.2d 1118,
7 1121 (9th Cir. 1991) (citing 18 U.S.C. § 3142(c)(2)). “Only in rare circumstances
8 should release be denied, and doubts regarding the propriety of release should be
9 resolved in the defendant’s favor.” *Id.* (citing *U.S. v. Motamedi*, 767 F.2d 1403, 1405
10 (9th Cir. 1985)).

11 III. Release Plan

12 Importantly, Mr. Lister has been in custody at the Yakima County Jail since
13 December 13, 2021.² He was taken into custody on state charges that have since been
14 resolved and for which Mr. Lister has served his sentence. *See* ECF No. 60 at 15. In the
15 roughly 16 months that Mr. Lister has been in continuous custody, he has largely been
16 deprived of meaningful substance use programming. A review of his criminal history,
17 however, reveals that he is in desperate need of treatment. Mr. Lister’s criminal history
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19 ² *See* Yakima County Jail Inmate Lookup, *available at*
<https://www.yakimacounty.us/2240/Inmate-Lookup> (last accessed Apr. 11, 2023)(noting a
booking date for Zebulon Ian Lister of 2021-12-13).

1 is largely comprised of misdemeanor driving offenses, theft offenses, and some more
2 significant charges of forgery and identity theft—all charges that are indicative of his
3 struggles with substance use.

4 Recognizing that he needs to gain control over his substance use disorder should
5 he want to make changes in his life, Mr. Lister secured a substance use assessment that
6 indicated he would benefit from inpatient treatment. A representative from Merit
7 Resources communicated to defense counsel's office that Mr. Lister has a bed date on
8 April 20 at The Center in Wenatchee. *See* Exhibit 1. Mr. Lister's mother, Pauline
9 Pestana, confirmed with defense counsel that she and her husband would be able to
10 transport Mr. Lister to The Center on his bed date.³ The probation office found no
11 criminal history for Mr. or Mrs. Pestana. ECF No. 60 at 2.

12 As this Court is aware, the limited programming that was available at Yakima
13 County Jail via the tablets has been restricted over the past several months. Although it
14 is defense counsel's understanding the tablets are becoming available again, the
15 programming that is available through them is a far cry from the intensive and robust
16 programming that is provided through inpatient treatment. Mr. Lister seeks this
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18 ³ Mrs. Pestana also confirmed that should Mr. Lister be released to the community after
19 completion of inpatient treatment, she can assist Mr. Lister financially with posting bonds and
quashing of currently pending warrants. Defense counsel spoke with the Clerks of Court of Lewis
and Centralia County and confirmed bonds could be posted and warrants quashed should Mr.
Lister appear.

1 Court's approval to take advantage of the resources available at The Center and begin
2 his journey towards sustained recovery.

3 As highlighted earlier, the Court detained Mr. Lister solely on a finding that his
4 release could present a risk of danger to the community. However, the limited release
5 that is sought now presents an extremely limited risk of danger to the community and
6 any risk that does exist could be mitigated by appropriate conditions. First, Mr. Lister's
7 release presents little risk to the community as he will not be released to reside in the
8 community at large, but rather at a controlled (though not "lockdown") environment
9 of a treatment facility. Second, in terms of specific risk to individuals, Mr. Lister is
10 amenable to the use of a GPS bracelet to ensure that he does not come into close
11 physical proximity with individuals he should not be near. Although there are some
12 allegations of violence in his past, the vast majority of his history is non-violent. In light
13 of this criminal history and his amenability to GPS monitoring, defense counsel
14 submits that appropriate conditions can be fashioned should Mr. Lister be released.

15 Defense counsel discussed this motion with AUSA Todd Swensen and USPO
16 Phil Casey—both oppose Mr. Lister's release to treatment.

17 Accordingly, Mr. Lister respectfully requests that the Court permit his release to
18 The Center on April 20, 2023. Mr. Lister further requests the Court set a status
19 hearing approximately three (3) weeks after he arrives at treatment to address the
propriety of his continued release.

1 Dated: April 11, 2023.

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11 Service Certificate

12 I certify that on April 11, 2023, I electronically filed the foregoing with the
13 Clerk of the Court using the CM/ECF System, which will notify Assistant United
14 States Attorneys: Todd Swensen.

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